

Protest of)	
)	Date: November 27, 1990
ARTHUR D. BERRY)	
)	
Solicitation No. 010-391-90)	P.S. Protest No. 90-56

DECISION

Arthur D. Berry timely protests the Postal Service's receipt and consideration of a bid received after bid opening, and the prospective award of the highway box delivery service route between Three Mile Bay, NY and Point Peninsula, NY described in Solicitation No. 010-391-90 to anyone but himself. The solicited service requires a 70 cubic foot station wagon for use on two daily trips (excepting Sundays and holidays) of approximately 20 miles each, or 12,122.80 scheduled miles annually.

The Springfield Transportation Management Service Center (TMSC) solicited bids for the service to be received by, and opened on, August 20, 1990. On that day, the bid custodian delivered three bids to the bid opening committee. Mr. Berry was second low (\$28,888.86). The low bidder was found to be unqualified to bid because he failed to meet certain residency requirements.^{1/} On August 22, two days after bid opening, the TMSC received a late bid from Cathy H. Matice, opened it on August 28 and found it to be low (\$22,773). The TMSC has not yet awarded the contract.

Mr. Berry challenges the propriety of the TMSC's acceptance of the late bid. Mr. Berry states that "[if] all was done properly," Ms. Matice's bid should have been received on time. Mr. Berry contends that if the Postal Service mishandled the letter, it would be unfair to penalize him by accepting the bid.

^{1/}P.S. Form 7469T, "Highway or Domestic Water Transportation Contract Information and Instructions, Special Requirements for Box Delivery Contracts" (included in the solicitation package) states:

In addition to meeting the other requirements set out herein, bidders or offerors on contracts requiring box delivery service must meet the eligibility requirements of this paragraph.

- a. An individual bidder or offeror must reside in a county traversed by the route or an adjoining county on the date and time set for bid closing, and must continue to so reside during the term of the contract and any renewal thereof.

In his statement on the protest^{1/}, the contracting officer explained that Ms. Matice's bid was mailed on August 15, as evidenced by the postmark on the envelope. The bid was received at the address specified in the solicitation on August 17, as indicated by a date stamp on the envelope, but delivered late to the bid custodian because an employee in the postal delivery facility misplaced the certified mail delivery notice. Two days after bid opening, the error was discovered and corrected. The contracting officer reported that he accepted the bid because it was sent by certified mail five days prior to bid opening and the solicitation notice stated that such bids would be accepted.

In comments on the contracting officer's statement, received on October 17, Mr. Berry questioned the authenticity of Ms. Matice's letter, and in particular, the fact that the letter was received on August 17. He also pointed out that the envelope is stamped with the date August 17 and the delivery receipt shows a date of August 22.

Contracting officers may consider bids for transportation service received at the office designated after the time set for receipt under certain circumstances including the following:

- (a) They were sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt....

Procurement Manual (PM) 12.7.4 c.1.(a). However, the Postal Service will accept as evidence of the date of mailing only "a legible, original postmark supplied and affixed on the date of mailing by Postal Service employees on the bid wrapper or on the original receipt given therefor...." PM 12.7.4 c.2.(a). In this case the postmark on the envelope containing Ms. Matice's bid indicated that it was mailed on August 15, five days before bid opening on August 20. It is therefore proper for the contracting officer to consider Ms. Matice's bid.^{1/}

Mr. Berry challenges the authenticity of the bid envelope and certified mail receipt. The photocopies of those documents attached to the contracting officer's statement appear

^{2/}The contracting officer initially omitted sending a copy of his statement to the protester. After this office discovered the oversight, we sent a copy of the contracting officer's statement to the protester.

^{3/}Consideration of the bid is also appropriate pursuant to P.S. Form 7469T, "Highway or Domestic Water Transportation Contract Information and Instructions" which permit the consideration of offers received after the date specified for receipt and before award when the following conditions are also met:

- c. they [the late offers] were sent by mail (or telegram if authorized) or delivered by other means to the precise depository prescribed in the solicitation and it is determined by the next higher level of contracting authority that the late receipt was due solely to mishandling after receipt by the office designated to receive offers.

to support the contracting officer's view of their contents. We cannot, however, resolve a factual dispute regarding the authenticity of documents. As we stated in Cohlma Airline, Inc., P.S. Protest No. 87-118, April 13, 1988, our bid protest forum is ill-suited to resolving factual disputes, as we cannot conduct adversary functions to any significant extent or degree. See also, International Mailing Systems, P.S. Protest No. 84-13, April 27, 1984; Southern California Copico, Inc., P.S. Protest No. 83-76, March 5, 1984. Instead, we adopt the contracting officer's position, absent evidence sufficient to overcome the presumption of correctness which attaches to the contracting officer's action. Harpers Ferry Properties, Inc., P.S. Protest No. 76-67, November 8, 1976; Alta Construction Company, P.S. Protest No. 85-2, February 26, 1985; Edsal Machine Products, Inc., P.S. Protest No. 85-84, January 29, 1986. Consequently, we assume for present purposes that the documents in question are authentic.

Mr. Berry's arguments regarding a discrepancy between the date stamped on the envelope and the date of execution of the certified mail receipt are without merit. As the contracting officer explains, Ms. Matice's bid was received on August 17 at the Main Street Station, Springfield, MA, and the envelope was date stamped at that time. Due to mishandling by the Postal Service, the bid was not received by the bid custodian until August 22. The bid custodian signed and dated the receipt on that date.

The protest is denied.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 6/22/93]